

**MAUREEN MAHONEY**  
Claimant

**MISSOURI SEWING MACHINE COMPANY**  
Respondent

**INDUSTRIAL INDEMNITY COMPANY**  
Insurance Carrier

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## ORDER

## APPEARANCES

## RECORD AND STIPULATIONS

## ISSUES

What is the nature and extent of claimant's injury and disability? More particularly, is claimant entitled to a work disability after returning to work for respondent in a self-imposed part-time job?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the Administrative Law Judge should be affirmed.

Claimant was awarded a 17 percent whole body functional impairment after the Administrative Law Judge determined that claimant's self-imposed part-time work did not constitute a good faith effort to find employment after her accident.

Claimant suffered injury on February 3, 2000, when a heavy sewing machine fell on her right foot. She received ongoing treatment, but ultimately was diagnosed with reflex sympathetic dystrophy (a/k/a complex regional pain syndrome). The problem spread to her leg, knee, hip and buttocks on the right side. The parties have stipulated claimant suffered a 17 percent permanent functional impairment to the body as a whole as a result of those injuries. After her injury, claimant returned to respondent, working 4 hours a day, which was a self-imposed part-time work situation. Respondent's representative testified that claimant was eligible for full-time work at a comparable wage if desired, but the limited work schedule was claimant's decision.

The Administrative Law Judge, citing *Foulk*<sup>1</sup>, determined that claimant's refusal to work full time, even though it was within the restrictions placed upon her by her treating physician, was contrary to the policies and principles set forth in *Foulk*. The Administrative Law Judge, therefore, determined that claimant did not put forth a good faith effort to find work after her injury. Under *Copeland*,<sup>2</sup> the finder of fact is then obligated to impute a wage to claimant which the Administrative Law Judge determined was a comparable wage based upon the evidence presented by respondent. Under K.S.A. 1999 Supp. 44-510e, if claimant is capable of returning to work at 90 percent of her wage or higher, then she is limited to her functional impairment.

Claimant argues that Edward J. Prostic, M.D., testified that claimant's part-time work was reasonable. That opinion was not contained in Dr. Prostic's report, but was instead merely an opinion provided at the time of his deposition. He did not go so far as to say that he recommended claimant only work part-time, just that it was reasonable. In addition, Greg A. Horton, M.D., claimant's treating physician, assumed at the time he placed restrictions upon claimant that she would be working full time.

The Board, therefore, finds the record supports the Administrative Law Judge's determination that claimant's decision to self-limit her work hours to part-time work did not

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<sup>1</sup> *Foulk v. Colonial Terrace*, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), rev. denied 257 Kan. 1091 (1995).

<sup>2</sup> *Copeland v. Johnson Group, Inc.*, 24 Kan. App. 2d 306, 944 P.2d 179 (1997).

constitute a good faith effort to obtain employment, post injury, and violates the policies and principles set forth in *Foulk*<sup>3</sup> and *Copeland*.<sup>4</sup> In imputing the wage claimant would have earned had she returned to respondent full time, the Board finds claimant would have earned at least 90 percent of her pre-injury wage. Therefore, claimant should be limited to her functional impairment of 17 percent to the body as a whole.

The Board, therefore, affirms the Award of the Administrative Law Judge granting claimant a 17 percent whole body functional impairment, but denying her any additional work disability.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of October 28, 2002, by Administrative Law Judge Julie A. N. Sample should be, and is hereby, affirmed.

### **IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 2003.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Mark E. Kolich, Attorney for Claimant  
Michael R. Kauphusman, Attorney for Respondent  
Julie A. N. Sample, Administrative Law Judge  
Paula S. Greathouse, Director

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<sup>3</sup> *Foulk, supra.*

<sup>4</sup> *Copeland, supra.*